

STATE'S RESPONSE IN OPPOSITION TO RELEASE OF THE DEFENDANT ON HIS OWN RECOGNIZANCE, OR REDUCTION IN BOND, OR THIRD PARTY RELEASE

The trial court must consider the factors listed in A.R.S. § 13-3967 in determining the amount of bail and/or the appropriateness of releasing the defendant.

The State of Arizona opposes the defendant's motion to release the defendant on his own recognizance, or to reduce the amount of his bond, or to release him to a third party, based upon the following information.

"Bail is not unconstitutionally excessive merely because a defendant has no means to pay it." *Soto v. Superior Court*, 190 Ariz. 450, 949 P.2d 539, 544 (App. 1997), quoting *Gusick v. Boies*, 72 Ariz. 233, 237, 233 P.2d 446, 448 (1951)

A.R.S. § 13-3967(C) provides:

B. In determining the method of release or the amount of bail, the judicial officer, on the basis of available information, shall take into account all of the following:

1. The views of the victim.
2. The nature and circumstances of the offense charged.
3. The weight of evidence against the accused.
4. The accused's family ties, employment, financial resources, character and mental condition.
5. The results of any drug test submitted to the court.
6. Whether the accused is using any substance if its possession or use is illegal pursuant to chapter 34 of this title.
7. The length of residence in the community.
8. The accused's record of arrests and convictions.
9. The accused's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

This Court must take into account the following enumerated matters based upon

available information in determining the method of release or the amount of bail.

1. The views of the victims:

The victims and their families greatly fear for their safety if the defendant is released. They believe the defendant will retaliate against them in some manner. They strongly oppose the defendant's release.

2. The nature and circumstances of the offense:

The defendant is charged with the serious crimes of four counts of child prostitution, Class 2 Felonies; two counts of receiving the earnings of a prostitute, Class 5 Felonies; and one count of participation in a criminal syndicate, a Class 2 Felony. The charges arose out of the defendant's conduct over the period of time between September 4, 2000 and September 7, 2000. During that time, the defendant brought a 12-year-old female runaway (Audrey) and a 16-year-old female runaway (Deven) from outside the state into Arizona for the purposes of having the victims engage in prostitution for him. Defendant enticed Audrey with the promise of money, a car, and new clothes if she would help drive one of his two cars to California. Upon arriving in Phoenix, the defendant wanted both victims to work as prostitutes for him. When the victims said they did not want to do so, the defendant hit Deven and cut up her hair. The defendant hit Audrey in her forehead and lower left jaw with his closed fist, and threatened to "bash in" and "rearrange" Audrey's face if she did not prostitute for him. The defendant also threatened to beat Deven if Audrey did not work as a prostitute. Both victims did work as prostitutes for the defendant and both victims gave the defendant the money they earned as prostitutes. Victim Audrey was able to escape from the defendant when she flagged down a passing motorist and asked to be taken to

a police station.

3. The weight of evidence against the defendant:

The victims agree as to the events with which the defendant is charged.

4. The defendant's family ties, employment, financial resources, character and mental condition:

To the best of the State's knowledge, all of the defendant's family ties are in Oklahoma. The defendant states he wants to reside in Oklahoma City, Oklahoma, but the "message phone number" he offers has an Atlanta, Georgia area code. If the area code the defendant lists is a typographical error, the State does not know where in Oklahoma the defendant would be living, or with whom, because the defendant did not include a Pretrial Services Questionnaire with his Motion for Release on his Own Recognizance. The defendant is a significant risk for leaving the State because he has no family, employment, or other contacts in Arizona.

The defendant describes himself as "self-employed," when, in fact, he lives off the earnings of girls he forces to commit acts of prostitution for him.

The defendant's financial condition is unknown.

5. The results of any drug test submitted to the court:

When the defendant was taken into custody, a urinalysis tested positive for cocaine use.

6. Whether the accused is using any substance if its possession or use is illegal pursuant to Chapter 34 of Title 13:

The defendant tested positive for cocaine use. Further, the victims have reported that he smoked crack cocaine in their presence.

7. The length of residence in the community:

Upon arrest, the defendant was traveling through Arizona on his way to California. The defendant is a transient and has insufficient ties to the Arizona community and society to be released.

8. The accused's record of arrests and convictions:

The defendant has a criminal history, including a federal felony conviction for transporting a minor in interstate commerce with intent to engage in prostitution, for which he was sentenced to six years at the Federal Correctional Institution in Seagoville, Texas in 1985. Additionally, the defendant was charged in 1981 with burglary in the second degree in Oklahoma.

9. The accused's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings:

The State is unaware of any instances in which the defendant fled to avoid prosecution or failed to appear at any court proceeding.

In conclusion, the defendant is a flight risk and a danger to society. Therefore, he should not be released on his own recognizance. The amount of bond this Court set is appropriate and not excessive. The State asks this Court to deny the defendant's motion.